IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

00 MAR -3 PM 4:24

CLERK-ALBUQUERQUE

LINDA G. CHOINIERE,

Plaintiff,

v. No. CIV 00 0328

PRESBYTERIAN HEALTHCARE SERVICE, INC.,
a New Mexico corporation,

Defendant.

RICHARD L. PUGLISI

NOTICE OF REMOVAL

COMES NOW, Defendant Presbyterian Healthcare Services, Inc. ("PHS") through its attorneys, Keleher & McLeod, P.A. and gives Notice of Removal of the above-entitled action. In support of the Notice, PHS states:

1. Plaintiff commenced this action through her counsel on February 10, 2000.

2. The Complaint states a civil action arising under the laws of the United States.

3. Plaintiff, claims her rights under the Family Medical Leave Act ("FMLA"), 29 U.S.C. § 2601 et seq., were violated.

4. The United States District Court for the District of New Mexico has original jurisdiction over the above-entitled action based pursuant to 28 U.S.C. §1331. The action may therefore be removed to Federal Court pursuant to 28 U.S.C. §1441(b).

5. Copies of the Summons and Complaint are attached as Exhibit "A" and "B" respectively.

6. A copy of the Jury Demand is attached as Exhibit "C."

7. A copy of Plaintiff's Arbitration Certification is attached as Exhibit "D".

8. A copy of Defendant's Answer is attached as Exhibit "E".

9. No further pleadings or proceedings have been filed herein in State Court.

10. This Notice is filed with the Court within thirty (30) days after service on PHS of the Summons and Complaint, the first pleadings served from which it may be ascertained that the case is removable.

WHEREFORE, PHS prays that the above action be removed from the Second Judicial District Court of the State of New Mexico to the United States District Court for the District of New Mexico and for such

Respectfully submitted,

KELEHER & McLEOD, P.A.

By: ______________________

Robert C. Conklin
Jacqueline M. Woodcock
PO Drawer AA
Albuquerque NM 87103
Telephone: (505) 346-4646
Attorneys for Defendant,
Presbyterian Healthcare Services, Inc

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Removal was mailed to the following counsel of record this 3 day of March, 2000:

J. Edward Hollington, Esq.
J. Edward Hollington & Associates, PA
708 Marquette NW
Albuquerque, NM 87102-2035
(505) 848-9171
Attorney for Plaintiff

____
Robert C. Conklin

mam0110

Received 2/11/00
at 1:00 pm

SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

No. ______________

LINDA G. CHOINIERE,

Plaintiffs,

vs.

PRESBYTERIAN HEALTHCARE SERVICES, INC.,
a New Mexico corporation,

Defendant.

SUMMONS

TO: Defendant Presbyterian Healthcare Services, Inc.
c/o Gene C. Walton, Registered Agent
5901 Harper Dr. N.E.
Albuquerque, NM 87109

Defendant(s), Greeting:

You are hereby directed to serve a pleading or motion in response to the Complaint within 30 days after service of the Summons, and file the same, all as provided by law.

You are notified that, unless you so serve and file a responsive pleading or motion, the Plaintiff(s) will apply to the Court for the relief demanded in the Complaint.

Attorney or Attorneys for Plaintiff: J. Edward Hollington
Address: 708 Marquette Avenue, N.W.
Albuquerque, NM 87102-2035
(505) 843-9171

WITNESS the Honorable THERESA BACA, District Judge of said Court of the State of New Mexico and the Seal of the District Court of said County, this ______ day of FEB ______, 2000.

THOMAS J. RUIZ
CLERK OF THE DISTRICT COURT

(SEAL)

By: ______________________________
Deputy

NOTE: This summons does not require you to see, telephone or write to the District Judge of the Court at this time. It does require you or your attorney to file your legal defenses to this case in writing with the Clerk of the District Court within 30 days after the summons is legally served on you. If you do not do this, the party suing may get a Judgment by default against you.

IF YOU WANT THE ADVICE OF A LAWYER AND DON'T KNOW ONE, YOU MAY WISH TO CALL THE ALBUQUERQUE BAR ASSOCIATION LAWYER REFERRAL SERVICE AT 243-2615, OR THE STATE BAR STATEWIDE LAWYER REFERRAL SERVICE AT 842-6132

Revised 1/1/83 C 4.45-S

Exhibit "A"

SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

No. CV-2000 01413

LINDA G. CHOINIERE,

Plaintiffs,

vs.

PRESBYTERIAN HEALTHCARE SERVICES, INC.,
a New Mexico corporation,

Defendant.

COMPLAINT FOR DAMAGES UNDER THE FAMILY MEDICAL LEAVE ACT

COMES NOW the plaintiff, Linda G. Choiniere, by and through her attorney, J. Edward Hollington, J. Edward Hollington & Associates, P.A., and for her Complaint against Presbyterian Healthcare Services, hereinafter "PHS", states:

I. JURISDICTION

1. Plaintiff, is a resident of Albuquerque, Bernalillo County, New Mexico.

2. Defendant, Presbyterian Healthcare Services, Inc. (hereinafter referred to as "PHS"), is a New Mexico non-profit corporation which has its principal location in Albuquerque, Bernalillo County, New Mexico.

3. Plaintiff, Linda G. Choiniere, hereinafter "Ms. Choiniere" was employed as Sales Director of Secure Horizons a division of PHS.

4. This action is filed pursuant to the Family Medical Leave Act, hereinafter "FMLA", 29 U.S.C. Section 2601 et seq.

5. This Court has jurisdiction over this action pursuant to 29 U.S.C. Section

Exhibit "B"

2617(a)(2).

6. At all times material to this action, PHS was an employer as defined by 29 U.S.C. Section 2611(4).

II. STATEMENT OF FACTS

7. Ms. Choiniere was Sales Director of Secure Horizons, a division of PHS.

8. Ms. Choiniere received favorable evaluations regarding the performance of her duties and responsibilities as the Sales Director.

9. PHS did not take any disciplinary action against Ms. Choiniere during her employment.

10. Ms. Choiniere supervised approximately 25 people.

11. Ms. Choiniere reported to Mr. Brian Schatz who was Executive Director of Secure Horizons.

12. Ms. Choiniere was pregnant in 1999 and she applied for leave under FMLA to give birth to her child in the fall of 1999.

13. PHS approved Ms. Choiniere's leave under FMLA.

14. Ms. Choiniere's FMLA leave began September 3, 1999.

15. Ms. Choiniere complied with all PHS requests and requirements for FMLA leave.

16. Ms. Choiniere's son was born September 17, 1999.

17. On the day Ms. Choiniere began her FMLA leave, Karen Smith replaced Brian Schatz as Executive Director of Secure Horizons.

18. Ms. Choiniere planned to return to work on November 1, 1999.

19. On October 29, 1999, Ms. Choiniere scheduled a meeting with Karen Smith, Executive Director of Secure Horizons, to ensure a smooth transition back into Ms. Choiniere's job as Sales Director.

20. At the meeting of October 29, 1999, Karen Smith told Ms. Choiniere that she [Karen Smith] planned to eliminate Ms. Choiniere's position. Ms. Choiniere responded that it was a violation of FMLA to terminate her while she was on FMLA leave.

21. Karen Smith then told Ms. Choiniere that she [Ms. Choiniere] was not to come back to work.

22. Ms. Choiniere had no notice or warning that her job was in jeopardy prior to October 29, 1999 and Ms. Choiniere had made plans to have her mother relocate from Kansas City to Albuquerque to help provide care for her infant son.

23. After Ms. Choiniere learned that Karen Smith intended to terminate her position, Ms. Choiniere at Karen Smith's request contacted the Human Resources Department of PHS to try and find out what was happening to her job.

24. On November 3, 1999, Ms. Choiniere spoke with Alicia Delacey of the Human Resources Department of PHS and explained that Karen Smith had informed her [Ms. Choiniere] that she was planning to terminate Ms. Choiniere's job.

25. Ms. Choiniere also told Ms. Delacey of the Human Resources Department that she felt the threatened termination of her job was a violation of FMLA.

26. Ms. Choiniere did not report back to work on November 1, 1999, because of the directives from Karen Smith.

27. A few days later, Alicia Delacey of the Human Resources Department called Ms. Choiniere and told her that plans had changed and she should report back to work.

28. On Monday, November 15, 1999, Ms. Choiniere reported back to work to resume her duties as Sales Director.

29. On November 19, 1999, Karen Smith met with Ms. Choiniere at which time she [Karen Smith] again informed Ms. Choiniere that her position was going to be abolished.

30. Karen Smith explained that she had taken Ms. Choiniere's duties and responsibilities and redistributed them to other managers who had previously reported directly to Ms. Choiniere. Ms. Smith also told Ms. Choiniere that she [Karen Smith] intended to hire two to three new managers. At the conclusion of the meeting, Karen Smith directed Ms. Choiniere to clean out her desk and office no later than December 1, 1999.

31. As of November 19, 1999, Ms. Choiniere had not received written notice or written information about the purported termination of her job.

32. Following the meeting with Karen Smith on November 19, 1999, Ms. Choiniere cleaned out her office and did not return to work.

33. On November 29, 1999, Ms. Choiniere's attorney had a letter hand-delivered to Karen Smith. The letter advised Ms. Smith that her actions were violating Ms. Choiniere's rights under the FMLA. Copies of the letter were sent to Mr. Jim Hinton, CEO/PHS; Mr. Gene Walton, Vice-President/PHS; and Ms. Rita Arthur, Vice-

President/Human Resources/PHS. [A copy of the letter is attached hereto as Exhibit 1.]

34. Following receipt of Ms. Choiniere's attorney's letter [Exhibit 1] PHS, on or about December 23, 1999, notified Ms. Choiniere in writing that her job was being terminated effective December 31, 1999.

35. Ms. Choiniere's compensation package as Sales Director was $113,243 per year plus benefits.

36. Ms. Choiniere was ready, willing and able to resume her duties and responsibilities as Sales Director on November 1, 1999.

37. Ms. Choiniere has lost income, benefits, commissions and other compensation as a result of PHS' violations under FMLA.

38. Ms. Choiniere has incurred attorney fees and costs and asks reimbursement for the same pursuant to 29 U.S.C. Section 2617(a)(3).

39. PHS' actions and omissions against Ms. Choiniere amount to willful violations of FMLA.

COUNT I
VIOLATIONS OF FMLA

40. Plaintiff hereby realleges and incorporates the above paragraphs 1 through 39 as if fully set forth herein.

41. 29 U.S.C. Section 2614(a) required that PHS restore Ms. Choiniere to her position as Sales Director or restore her to an equivalent position with equivalent benefits, pay and other terms and conditions of employment.

42. Ms. Choiniere was qualified to return to the position of Sales Director or

an equivalent position following her FMLA leave on November 1, 1999.

43. PHS did not restore Ms. Choiniere to her position of employment as Sales Director and did not offer her an equivalent position when she returned from her FMLA leave.

44. PHS did not abolish the job duties and responsibilities of Sales Director.

45. Ms. Choiniere objected to PHS' violations of her rights under FMLA and in particular, PHS' apparent decision to terminate Ms. Choiniere without warning during her FMLA leave.

46. PHS terminated Ms. Choiniere's job because she exercised her rights under FMLA.

47. PHS' actions were willful and done in bad faith.

WHEREFORE, Plaintiff prays for judgment against PHS and an award of damages for lost income, benefits, commissions and other compensation be proven at trial, plus pre judgment and post judgment interest, and liquidated damages as provided by 29 U.S.C. 2617(a)(1)(A)(iii), attorney fees and costs and restore her to her former position as Sales Director of Secure Horizons.

COUNT II
RETALIATION

48. Plaintiff hereby realleges and incorporates the above paragraphs 1 through 47 as if fully set forth herein.

49. Ms. Choiniere's taking of leave under FMLA was protected activity. Ms. Choiniere's verbal and written objections to PHS' violations of FMLA with its threats to

terminate her position upon her return from FMLA leave is protected activity.

50. PHS took adverse employment action against Ms. Choiniere after she voiced objections to PHS' violations of her rights under FMLA by terminating her employment.

51. PHS terminated Ms. Choiniere in retaliation of the leave she took and for asserting her rights under FMLA.

52. PHS' actions against Ms. Choiniere were willful and done in bad faith.

WHEREFORE, Plaintiff prays for judgment against PHS and an award of damages for lost income, benefits, commissions and other compensation be proven at trial, plus pre judgment and post judgment interest, and liquidated damages as provided by 29 U.S.C. 2617(a)(1)(A)(iii), attorney fees and costs and restore her to her former position as Sales Director of Secure Horizons.

Respectfully submitted,

J. EDWARD HOLLINGTON & ASSOCIATES, P.A.

By: ______________________

J. Edward Hollington
Attorney for Plaintiff
708 Marquette N.W.
Albuquerque, NM 87102-2035
(505) 843-9171

J. Edward Hollington & Associates, P.A.

Law Offices
708 Marquette, N.W.
Albuquerque, New Mexico 87102

J. Edward Hollington
Since 1976

(505) 843-9171
Fax (505) 843-7027
FEIN #85-0385041

November 29, 1999

VIA HAND-DELIVERY

Ms. Karen Smith - Executive Director - Secure Horizons
2501 Buena Vista SE
Albuquerque, NM 87125

RE: Mrs. Linda Choiniere

Dear Ms. Smith:

I represent Mrs. Choiniere regarding her employment situation with Secure Horizons/PHS. Your recent actions of abolishing Mrs. Choiniere's position as Director of Sales and refusal to reinstate her to an equivalent position violates the Family Medical Leave Act of 1993. Mrs. Choiniere was on her leave under the Family Medical Leave Act for the pregnancy and birth of her son. Her leave commenced on September 10, 1999. She planned to return on November 1, 1999. On Friday, October 29, 1999, she met with you to prepare for resuming her position as Sales Director. During that meeting, you told her that you had made the decision to eliminate her position. You told her that she was not to return to work, because you did not want others to "begin to depend on 'her' again". You told Mrs. Choiniere to contact Human Resources to learn of her severance options. You did not offer her an equivalent position.

On Friday, November 5, 1999, Mrs. Choiniere received a call from Alicia DeLacey of Human Resources Department. Ms. DeLacey told Mrs. Choiniere that she was to report back to work as a Sales Director. Mrs. Choiniere explained to Ms. DeLacey that based on your directives not to return to work she had cancelled plans and arrangements for child care which involved Mrs. Choiniere's mother moving from Kansas City to Albuquerque to help take care of their child. On Monday, November 15th, Mrs. Choiniere returned to work as directed. On November 19th, 1999, you [Karen Smith] met with Mrs. Choiniere and again told her that her position had been abolished and she would receive notice on December 1st, 1999.

EXHIBIT

During the conversation of November 19th, 1999, you explained to Mrs. Choiniere how you had redistributed her job responsibilities and intended to add two new positions.

The Family Medical Leave Act provides that Mrs. Choiniere is entitled to return to the same position she held at the beginning of her leave or to an "equivalent position with equivalent benefits, pay and other terms and conditions of employment". 29CFR Section 825.214. Your actions of telling Mrs. Choiniere on October 29th, 1999 that her job had been abolished, allowing her to return to work and then reaffirming that her job is abolished and telling her duties had already been reassigned to current employees and two new employees violates Section 29CFR 825.214-216.

Mrs. Choiniere intends to continue to serve in her capacity as a Sales Director and your continued attempts to terminate her amount to acts of retaliation and interference with her rights under FMLA, and violates 29USC Section 2615.

Your prompt response to this letter is requested.

Sincerely,

J. EDWARD HOLLINGTON & ASSOCIATES, P.A.

J. Edward Hollington
Attorney at Law

JEH/egh
cc: Mr. Jim Hinton, CEO (via hand-delivery)
Gene Walton, Vice-President (via hand-delivery)
Rita Arthur, Vice-President, Human Resources (via hand-delivery)
Mr. and Mrs. Rob Choiniere (via e-mail)

SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

No. CV-2000 01413

LINDA G. CHOINIERE,

Plaintiffs,

vs.

PRESBYTERIAN HEALTHCARE SERVICES, INC.,
a New Mexico corporation,

Defendant.

ENDORSED
FILED IN MY OFFICE
FEB 10 2000
CLERK DISTRICT COURT

DEAN DUNSWORTH

JURY DEMAND

Plaintiff, Linda G. Choiniere, through her undersigned counsel, demands a trial by a six-person jury of all issues triable of right by jury and hereby tenders the sum of $100.00 for jury fee.

Respectfully submitted,

J. EDWARD HOLLINGTON & ASSOCIATES, P.A.

By: ______________________________

J. Edward Hollington
Attorney for Plaintiff
708 Marquette N.W.
Albuquerque, NM 87102-2035
(505) 843-9171

Exhibit "C"

2-23-00

REC'D FEB 1_ 2000
by mail

SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

No. CV-2000-01413

LINDA G. CHOINIERE,

Plaintiffs,

vs.

PRESBYTERIAN HEALTHCARE SERVICES, INC.,
a New Mexico corporation,

Defendant.

COURT-ANNEXED ARBITRATION CERTIFICATION

COMES NOW plaintiff, **Linda G. Choiniere**, by and through her attorneys of record, J. Edward Hollington & Associates, P.A., pursuant to Second Judicial District Local Rules, Rule LR2-603, and certifies as follows:

[ ] This party seeks only a money judgment and the amount sought does not exceed Twenty-Five Thousand Dollars ($25,000.00), exclusive of punitive damages, interest, costs, and attorney fees.

[X] This party seeks relief other than a money judgment and/or seeks relief in excess of Twenty-Five Thousand Dollars ($25,000.00), exclusive of punitive damages, interest, costs and attorney fees.

Respectfully submitted,

J. EDWARD HOLLINGTON & ASSOCIATES, P.A.

By ______________________
J. Edward Hollington
Attorneys for the Plaintiff
708 Marquette Avenue, N.W.
Albuquerque, New Mexico 87102-2035
Telephone: (505) 843-9171

Exhibit "D"

I hereby certify that a true and correct copy of the above was mailed to:

Defendant Presbyterian Healthcare Services, Inc.
c/o Gene C. Walton, Registered Agent
5901 Harper Dr. N.E.
Albuquerque, NM 87109

on this 11th day of February, 2000.

J. Edward Hollington, Esq.

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

ENDORSED
FILED IN MY OFFICE THIS
MAR 0 3 2000
CLERK DISTRICT COURT
ANN CARABAJAL

LINDA G. CHOINIERE,

Plaintiff,

v. No. CV-2000-01413

PRESBYTERIAN HEALTHCARE SERVICE, INC., a New Mexico corporation,

Defendant.

ANSWER

COMES NOW, Defendant Presbyterian Healthcare Services, Inc. ("Defendant" or "PHS"), and for its Answer to the Complaint For Damages Under the Family Medical Leave Act states, as follows:

FIRST DEFENSE

Response to Jurisdictional Allegations

1. Defendant is without sufficient information to admit or deny the allegations of Paragraph 1 and, therefore, denies same.

2. Defendant admits the allegations of Paragraph 2.

3. In response to the allegations of Paragraph 3, Defendant admits that Plaintiff was employed at Presbyterian Health Plan as Director, Medicare Sales, for Secure Horizons, a health care program, but denies the remaining allegations of Paragraph 3.

4. Defendant admits the allegations of Paragraph 4.

5. Defendant is without sufficient information to admit or deny the allegations of Paragraph 5 and, therefore, denies same.

6. The allegations of Paragraph 6 call for a legal conclusion to which no response is required or, alternatively, Defendant is without sufficient information to admit or deny the allegations because it cannot be determined what it meant or intended by "at all times material to this action." Such allegations are, therefore, denied.

Response to Factual Allegations

7. Defendant incorporates its response to Paragraph 3 in response to the allegations of Paragraph 7.

8. The evaluations are the best evidence of what they provide and speak for themselves. Such allegations are, on this basis, and on the basis that Plaintiff's performance was in several respects less than favorable, denied.

9. Defendant admits the allegations of Paragraph 9.

10. In response to the allegations of Paragraph 10, Defendant states that Plaintiff had four direct reports, who supervised several other people, and denies the remaining allegations..

11. In response to the allegations of Paragraph 11, Defendant states that Plaintiff reported to Mr. Schatz prior to September 7, 1999, and to Karen Smith after that date.

12. Defendant admits the allegations of Paragraph 12.

13. Defendant admits the allegations of Paragraph 13.

14. Defendant denies the allegations of Paragraph 14.

15. Defendant denies the allegations of Paragraph 15.

16. Defendant is without sufficient information to admit or deny the allegations of paragraph 16 and, therefore, denies same.

17. In response to the allegations of Paragraph 17, Defendant states that Karen Smith became Vice President and Executive Director of Secure Horizons on September 7, 1999, and denies the remaining allegations.

18. In response to the allegations of Paragraph 18, Defendant states that November 1, 1999 may have been the date when Plaintiff originally planned to return, however, on October 29, 1999, she requested to extend her leave and expressed interest in part-time employment, and denies any remaining or contrary allegations.

19. In response to the allegations of Paragraph 19, Defendant admits that on October 29, 1999, Karen Smith met with Plaintiff and Plaintiff requested to extend her FMLA leave, and expressed interest in part-time employment, and denies the remaining allegations of Paragraph 19.

20. In response to the allegations of Paragraph 20, Defendant states that Ms. Smith told Plaintiff, among other things, that active sales in El Paso had ceased, that the year 2000 budget was being cut by more than $2,000,000 in marketing and sales, and that her position was not budgeted for 1/1/2000, and denies the remaining allegations.

21. Defendant denies the allegations of Paragraph 21.

22. In response to the allegations of Paragraph 22, Defendant states that there were numerous circumstances that should have indicated to Plaintiff that the program could not continue with its present level of staffing, expenses and losses, that had Plaintiff done the budgeting normally done in October, these matters should have been addressed, that the discussion of the budget included a discussion of several positions, including Plaintiff's, which were not budgeted for in 2000, that until the budget was done, the elimination of positions was not determined, and denies any contrary allegations of Paragraph 22.

23. In response to the allegations of Paragraph 23, Defendant states that Plaintiff was advised by Karen Smith to seek the advice of Human Resources regarding her request to extend her FMLA leave and regarding the future elimination of her position, and to determine all of her options, but denies the remaining allegations.

24. In response to the allegations of Paragraph 24, Defendant states that Plaintiff and her husband asked several questions about the potential elimination of Plaintiff's position, and denies the remaining allegations of Paragraph 24.

25. Defendant denies the allegations of Paragraph 25.

26. Defendant denies the allegations of Paragraph 26.

27. In response to the allegations of Paragraph 27, Defendant states that Alicia Delacey told Plaintiff she could report back to work and to make such arrangements with Karen Smith. The remaining allegations are denied.

28. In response to the allegations of Paragraph 28, Defendant admits that Plaintiff returned to work in her position as Medicare Sales Director on November 15, 1999 and, upon information and belief, worked about one-half of a day that day and the next several days.

29. In response to the allegations of Paragraph 29, Defendant states that Karen Smith met with Plaintiff on November 19, 1999 to define the projects the marketing and sales areas were working on, to make assignments to Plaintiff, and to establish timelines. Plaintiff asked for three days off the week of November 22, and also asked about her position elimination date. Plaintiff was told that the date had not been finalized. The remaining allegations of Paragraph 29 are denied.

30. In response to the allegations of Paragraph 30, Defendant denies the allegations of the first sentence, although the assignments made by Plaintiff prior to her leave and new

assignments were discussed. denies the allegations of the second sentence. although Plaintiff did state that she had seen a position posted for two Project Managers, which were required for regulatory purposes. and denies the third sentence of Paragraph 30.

31. Defendant admits the allegations of Paragraph 31, and affirmatively states that written notice had not been given because, as of November 19, 1999, the position elimination date had not been determined.

32. In response to the allegations of Paragraph 32, Defendant states that Plaintiff was told not to clean out her office, but did so.

33. In response to the allegations of Paragraph 33, Defendant admits that Plaintiff's attorney hand-delivered a letter to Karen Smith's secretary on November 29, 1999, that the letter is attached to the Complaint as Exhibit 1, and states that the letter speaks for itself and, on that basis, the remaining allegations of Paragraph 33 are denied.

34. In response to the allegations of Paragraph 34, Defendant states that Plaintiff was contacted by Human Resources to participate in an exit interview on December 20, 1999. Plaintiff left a message stating that she was unavailable the week of December 20 even though she was being paid. therefore, a written notice was mailed to her. Defendant specifically denies that the notice or the position elimination were related in any way to Plaintiff's attorney's letter or Plaintiff's prior leave.

35. Defendant denies the allegations of Paragraph 35.

36. Defendant denies the allegations of Paragraph 36.

37. Defendant denies the allegations of Paragraph 37.

38. Defendant is without sufficient information to admit or deny the allegations of Paragraph 38 and, therefore, denies same.

39. Defendant denies the allegations of Paragraph 39.

Response to Count I

40. Defendant incorporates its admissions and denials to Paragraphs 1 through 39, in response to the allegations of Paragraph 40.

41. Defendant denies the allegations of Paragraph 41.

42. In response to the allegations of Paragraph 42, Defendant states that Plaintiff was qualified for the Director, Medicare Sales, however, she did not want to come to work on November 1, and she requested an extension of the FMLA leave and asked about part-time work. Any remaining or contrary allegations of Paragraph 42 are denied.

43. Defendant denies the allegations of Paragraph 43.

44. Defendant denies the allegations of Paragraph 44.

45. Defendant denies the allegations of Paragraph 45.

46. Defendant denies the allegations of Paragraph 46.

47 Defendant denies the allegations of Paragraph 47.

Response to Count II

48. Defendant incorporates its admissions and denials to Paragraphs 1 through 47 in response to the allegations of Paragraph 48.

49. The allegations of Paragraph 49 call for a legal conclusion to which no response is required. Alternatively such allegations are denied.

50. Defendant denies the allegations of Paragraph 50.

51. Defendant denies the allegations of Paragraph 51.

52. Defendant denies the allegations of Paragraph 52.

General Denial

53. Defendant denies all allegations of the Complaint which are not specifically admitted above.

SECOND DEFENSE

Plaintiff had no greater rights than an employee who remained at work or if she had been continuously employed during her FMLA leave period.

THIRD DEFENSE

Plaintiff was reinstated to her same position.

FOURTH DEFENSE

An employee who requests or takes FMLA leave has no greater protection against her employment being terminated for reasons not related to her FMLA request or leave than she would have in the absence of the request or leave.

FIFTH DEFENSE

Plaintiff's position was eliminated for legitimate business reasons unrelated to her request for FMLA leave and unrelated to her alleged objections concerning her FMLA rights.

SIXTH DEFENSE

An employee may be laid off as long as the action would have been taken in the absence of FMLA leave.

SEVENTH DEFENSE

There was no causal connection between the elimination of Plaintiff's position and her FMLA leave or alleged objections.

EIGHTH DEFENSE

Plaintiff's claims are barred by the doctrines of waiver and estoppel.

NINTH DEFENSE

Plaintiff's Complaint fails to state a claim for punitive damages upon which relief may be granted.

TENTH DEFENSE

Plaintiff's claims are barred in whole or in part by the FMLA, the regulations promulgated thereunder, and the Civil Rights Act of 1991.

ELEVENTH DEFENSE

Plaintiff's claims are barred in whole or in part by her failure to mitigate her damages.

REQUEST FOR ATTORNEY'S FEES

Defendant PHS requests an award for its attorney's fees incurred herein.

WHEREFORE, having fully answered, Defendant PHS requests that the Complaint be dismissed, with prejudice, for its costs and attorney's fees incurred herein, and for such other and further relief as may be just and proper.

Respectfully submitted,

KELEHER & McLEOD, P.A.

By: ______________________

Robert C. Conklin
Jacqueline M. Woodcock
PO Drawer AA
Albuquerque NM 87103
Telephone: (505) 346-4646
Attorneys for Defendant,
Presbyterian Healthcare Services, Inc

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer was mailed to the following counsel of record this 3 day of March, 2000:

J. Edward Hollington, Esq.
J. Edward Hollington & Associates, PA
708 Marquette NW
Albuquerque, NM 87102-2035
Attorney for Plaintiff

Robert C. Conklin

sls0363